

**IN THE COURT OF APPEALS FOR THE STATE OF TENNESSEE –
EASTERN DIVISION**

BOBBY MacBRYAN GREEN

Plaintiff,

vs.

**JODI JONES, HOWELL SHERROD,
BETTY ANN POLAHA, and
MARY LEE JONDAHL**

Defendants.

Cause No. E2011-02587-COA-R3CV

BRIEF OF APPELLEE

**HOWELL H. SHERROD, JR. (BPR No. 842)
Sherrod, Goldstein & Lee
249 East Main Street
Johnson City, TN 37604-5707
(423) 928-8321**

ATTORNEY FOR APPELLEE

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OPINION BELOW

A copy of the Final Decree of the Chancery Court for Washington County, Tennessee is found in Tr.Vol. I, pp. 85-86. After hearing the evidence, the argument of counsel, the stipulations of the parties and from the entire record, the trial court found in favor of all defendants on all issues and ordered in pertinent part the following:

1. That the original Complaint and all supplemental filings are dismissed as to all named defendants.
2. That Plaintiff's Request for a Temporary Injunction was properly denied.
3. That the plaintiff, Bobby MacBryan Green, was properly removed as president of the Southside Neighborhood Organization.
4. That the plaintiff, Bobby MacBryan Green is direction to return all property on the attached list to the present president, Jodi Jones, or her designee by noon on Thursday, August 11, 2011.
5. That the costs of this case are taxed against the plaintiff, Bobby MacBryan Green, for which let execution issue if not sooner paid.

STATEMENT OF THE CASE

This is an appeal from a Final Decree based upon a hearing on August 9, 2011, as a result of plaintiff's original Complaint; Plaintiff's Petition for a Restraining Order; Plaintiff's Amended Petition for Restraining Order; the denial of Plaintiff's restraining order; the Answer of the Defendants dated July 29, 2011; the Motion to Dismiss, dated July 29, 2011, with attached affidavits from Jones, Polaha and Jondahl, members and officers of SNO at all times material; and, the various motions and orders.

Howell Sherrod, Jr. (hereinafter referred to as "Sherrod"), was removed as a party to the instant suit shortly after the Complaint was filed with the understanding that he would not sue Green for malicious prosecution on behalf of himself based upon the action naming Sherrod as a defendant without any allegations that could render Sherrod liable for any damages.

Chancery Docket entry of July 11, 2011 under Orders of Court states: "order dismissing Howell Sherrod as a defendant in this case and he is allowed to represent remaining defendants". Tr. P. 147, Ex. B.

STATEMENT OF THE FACTS

Bobby MacBryan Green (hereinafter referred to as “Green”) was president of the Southside Neighborhood Organization (hereinafter referred to as “SNO”).

SNO members became dissatisfied with Green as a member and as president of this neighborhood organization.

SNO members, at a regularly scheduled meeting, unanimously voted to ask Green, who was present, to relinquish his position and he refused.

Subsequently, SNO removed Green not only as an officer but refused to accept him as a member by returning his membership dues.

Green unilaterally sought to remain president and remain as a member, resulting in his filing a lawsuit to enforce his wishes against the SNO.

Green filed suit to retain his position as president of SNO on June 23, 2011.

Hearings were scheduled which were not attended by Green personally. At the last hearing before Chancellor G. Richard Johnson attended by the defendants and by the attorneys representing the plaintiff, Green, and the remaining defendants, Jones, Polaha and Jondahl, the parties made certain stipulations resulting in Green’s suit against the defendant, members and officers of SNO, being dismissed in its entirety and requiring Green to return all personalty belonging to SNO which was in his possession, which Green has done.

See Final Decree, found in Tr. Vol. I, pp. 85-86

ARGUMENT

The transcript of proceedings of the hearing held on November 2, 2011, was filed as Vol. II to this appeal. Mr. Green points out:

...there is one serious error in the recitals on Page 1 of the Final Decree and it's repeated again on Page 2, ... It stated that, "Plaintiffs' request for a temporary injunction [sic] was properly denied." That is erroneous, your Honor. To the best of my knowledge, my request for a temporary injunction [sic] has never been presented to any judge."

Green later admits that the Restraining Order was presented to Judge Seeley and was denied.

Vol. II, p. 3, l. 22 – p. 6, l. 13.

Green opines: "There is no indication in the record what the basis for the Final Decree is." P. 6, ll. 22-24.

The Court's Opinion states as follows:

The Court: It's a nonprofit association [SNO] composed of residents of the south side of Johnson City. And just very candidly and very frankly, for whatever reason, the Southside Neighborhood Association did not want Mr. Green as its President and it did not want him as a member. Now that's between Southside and Mr. Green. There's no doubt that a voluntary organization has the right to say who can belong and who cannot belong. So on all – and the Complaint of Mr. Green was responded to and all the substantial allegations were denied, that, anything, was remiss in removing him. The Answer says that the procedures were followed and that, yes, in fact, they had removed him as President and, yes, in fact, they had removed him as a member and that he had caused some disturbances and some problems that the association, either real or perceived, had and found it was in the best interest of the association not to have Mr. Green.

Mr. Green was advised that on Tuesday, August 9, 2011, that this Court would have a hearing, and at that time, Mr. Green had a lawyer, Mr. Tom Jessee. So the hearing was set, as I recollect, a couple of times. I was having some eye surgery and some problems. But, anyway, on Tuesday, August 9th, we had the hearing. And the lawyers got together and made stipulations, put it all before the Court, and, primarily, the injunction issue that Mr. Green had prayed for to stop everything in its steps and leave it as it was until we could sort it out, Mr. Green had, evidently, although he didn't advise me in his pleadings, had, evidently appeared and attempted to get an ex parte

TRO against the defendants who belong to the association. Judge Seeley, my Circuit Court counterpart who acts by interchange, when he's out, I take his place, when I'm out, he takes mine, and he refused that TRO that was presented by Mr. Green. In any event, we had the hearing. It was a full hearing, it was a complete hearing, it was a fair hearing. Mr. Green didn't come. His lawyer very much participated. And the Final Decree simply says that I've dismissed the Complaint and all supplemental pleadings, that I deny the request for the temporary injunction, that Mr. Green was properly removed as President of the Southside Neighborhood Association, that Mr. Green is directed to return all of the property of the Southside Neighborhood Association to Jodi Jones or her designee and the costs are taxed against Mr. Green

Mr. Green complains about the hearing but he did not attend the hearing. Mr. Green complains about the result of the hearing but he did not attend the hearing. He had a very able, qualified, experience lawyer that appeared for him and who did, I'm sure, as good a job as he could possibly do. Today, Mr. Green doesn't have any new evidence in support of the Motion. He doesn't cite any change in the law since the Motion. The Court finds that there's been no injustice here that needs to be corrected, that Mr. Green, in spite of his protest, was given a due process hearing, was given a fair hearing with all the notices and all the parties present. The Court, most respectfully, denies the Motion to Alter or Amend.

CONCLUSION

T.R.C.P. 52, Findings by the Court controls the outcome of this case and states in pertinent part, Section 52.01. Findings Requires as follows:


If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein.

Based upon the above, Appellees, believe the Appellant's issues are unsupported and that they should be allowed their appropriate costs and expenses for this appeal.

Respectfully submitted,

JODI JONES, BETTY ANN POLAHA, and
MARY LEE JONDAHL

By



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served upon counsel for all parties of interest in this case by delivering a true and exact copy of said pleading to the Appellant or by placing a true and exact copy of said pleading in the United States Mail, addressed to said Appellant at his home address, with sufficient postage thereon to carry same to its destination.

This the 26th day of Mar, 2012.

SHERROD, GOLDSTEIN & LEE

By 

Copy to:

Bobby MacBryan Green
404 Holly Street
Johnson City, Tennessee 37604

SHERROD, GOLDSTEIN & LEE

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March 25, 2012

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RE: Bobby MacBryan Green v. Jodi Jones, Howell Sherrod, Betty Ann Polaha and Mary
Lee Jondahl
Case Number: E2011-02587-COA-R3-CV

Dear Mr. Catalano:

Please find enclosed the Appellate Record pursuant to Tenn. R. App. 25 and four (4) copies
of the Brief of the Appellees.

Yours truly,



Howell H. Sherrod, Jr.

HHS/mbp

Enclosures

cc: Bobby MacBryan Green

